

# State v. Montoya

**Case Number**

S-19-0660

**Case Audio**

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**Call Date**

March 5, 2020

**Case Time**

1:30 PM

**Court Number**

Lancaster

**Case Location**

Omaha Northwest High School

**Court Type**

District Court

**Extended Case Summary**

A- 19 ? 0660, State of Nebraska v. Lorenzo R. Montoya (Appellant).

County Court for Lancaster County, Hon. Thomas E. Zimmerman (originating court)

District Court of Lancaster County, Hon. Andrew Jacobsen (intermediate appellate court)

Attorneys: Douglas J. Peterson and Matthew Lewis (Attorney General?s Office representing the State of Nebraska)?Joe Nigro and Sarah J. Safarik (Public Defender?s Office representing Appellant Montoya)

Criminal: Driving Under the Influence, Third Offense, a Class W misdemeanor

Proceedings Below: Prior to trial, the county court overruled Montoya?s motions to suppress evidence, and motion in limine. A jury found Montoya guilty of driving under the influence, third offense. The county court sentenced Montoya within statutory limits. Montoya appealed from the county court to the district court. The district court affirmed the conviction and sentence.

Issues on appeal: Montoya argues that the district court erred in affirming (1) the county court orders that overruled his motions to suppress challenging the stop and the arrest, (2) the county court order overruling his motion to suppress/motion in limine challenging the admission of the DataMaster test result, (3) Montoya?s conviction, despite insufficient evidence, and (4) Montoya?s excessive sentence.

Facts: Montoya was pulled over after the arresting officer observed him speeding and crossing the double yellow line. The officer?s radar clocked the car at 50 miles per hour in a 35 mile per hour zone. The officer initiated a traffic stop. Upon making contact with the driver, later identified as Montoya, the officer smelled alcohol, and Montoya admitted that he had been drinking. The officer observed Montoya commit several errors in field sobriety tests and after a fifteen minute observation period, administered a preliminary breath test. The preliminary breath test registered a .176 blood alcohol content reading, a level over the legal

limit. Montoya was arrested. A blood sample was taken from Montoya and analyzed using a DataMaster machine. The DataMaster test showed his blood alcohol level to be over the legal limit.

Prior to trial, Montoya attempted to suppress evidence obtained after the traffic stop and after the arrest, alleging no reasonable suspicion or probable cause existed to stop his vehicle. Montoya also sought to exclude evidence of the DataMaster result showing his blood alcohol level was over the legal limit due to inaccuracies of the certificates of persons who tested the machine's simulator solution. Those motions were overruled.

At trial, when the State offered the evidence, Montoya objected. The county court overruled his objection and received the evidence. After a trial, a jury found him guilty of the crime. The county court sentenced him 180 days in jail, a fine of \$1,000, and a license revocation of 15 years. Montoya appealed his conviction and sentence to the district court, and the district court affirmed the conviction and his sentence.

Montoya now appeals. Both sides submitted written briefs to the Supreme Court. After hearing arguments from both sides at an oral argument before the Supreme Court, the Court will submit the case for disposition, and will issue an opinion deciding the case in the coming months.

**Schedule Code**

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